IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 8, 2009 Session

SCOTT A. HEATON, ET AL. v. DEAN STEFFEN, ET AL.

Appeal from the Chancery Court for Carter County
No. 26388 G. Richard Johnson, Chancellor

No. E2008-01564-COA-R3-CV - FILED AUGUST 27, 2009

This litigation is about disputed ownership of 20 acres of mountain land in Carter County. The case was tried without a jury resulting in a judgment for Dean Steffen ("the defendant"). The trial court found that there was no question as to the amount or location of the disputed property ("the Disputed area"). Brothers Scott A. Heaton and Daniel J. Heaton ("the plaintiffs") proceeded on two theories: (1) that they had superior title to the Disputed area, and, if not, (2) that the land had been adversely possessed long enough to sustain their ownership. The court found that the defendant, who purchased his land in 1985, had superior title to the Disputed area through deeds that dated back to the 1800s. The defendant's chain of title did not vary in description or acreage. The court found that the plaintiffs' title to the Disputed Area was based solely on a deed of correction made in 1987 by family members, a deed that the court found had no legal basis. The trial court also found that the plaintiffs had not established adverse possession. After judgment was entered for the defendant, the plaintiffs moved to alter or amend the judgment, asking, among other things, for an order defining the complete boundaries of their land to include the Disputed area. The trial court denied the motion. The plaintiffs appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

John Banks, Elizabethton, Tennessee, for the appellants, Scott A. Heaton and Daniel J. Heaton.

Bob McD. Green, Johnson City, Tennessee, for the appellee, Dean Steffen.

OPINION

I.

It is undisputed that both the plaintiffs and the defendant own land in an area known as Walnut Mountain in a remote area of Carter County. Trial Exhibits 1 and 2 were used by both parties to illustrate the areas of undisputed ownership as well as the Disputed area. We have attached to our opinion copies of Exhibit 1, a survey, and Exhibit 2, a county tax map, as Appendix A and Appendix B respectively. We have slightly altered the trial exhibits by reducing the size to fit normal paper, and by labeling the plaintiffs' undisputed property as "Heaton," the defendant's undisputed property as "Steffen," and the Disputed area, shown in cross-hatch on Appendix A, as "Disputed." We have also added an arrow indicating north on the appendices. Both tracts lay to the south and west of the Elk River. A review of the referenced appendices shows that, regardless of who is successful in this case, plaintiffs' land lays generally to the north and west of the defendant's. The parcels meet along a boundary line that runs generally from the south toward the north. The Disputed area is generally egg-shaped, laying at the southwest extreme of what the defendant claims and the southeast extreme of what the plaintiffs claim.

With this brief orientation, we find the trial court's bench opinion to be a good starting place for setting out the facts and disposition of the case:

> [T]he Court has not only judged the evidence, the sworn answers and the Exhibits, but has also evaluated the credibility of the witnesses. And, of course, the Court's Opinion is based upon those sworn answers, Exhibits, stipulations and from the record as a whole. . . .
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> [A]s a matter of fact, I think there is one thing these parties can agree on, probably nothing else, is that the hatched area is the disputed area. I mean, there's no question there by anybody. That's the only thing they have agreed upon. The Exhibits reflecting the so-called hatched area, the crossed area, the boxed area, is the area in dispute. The Plaintiffs claim that their deeds accurately reflect that they own the disputed area. They go on to aver that if the descriptions in their deeds are inconclusive, then they rely upon the doctrine of adverse possession.
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> The Court finds that in fact the deeds in Plaintiffs chain of title do not reasonably encompass the hatched area. The Court notes that from the eighteen hundreds the Defendants' deeds descriptions have been about the same. Further, the Court notes that commencing pursuant to Exhibit 7, that in '63, 1963, there was a warranty deed from Birchfield to . . . Heaton for twenty-eight acres. And that same property from Heaton to . . . Coldwell in the '73 deed also recited twenty-eight acres. In a deed from Coldwell . . . to McFarland that same twenty-eight acres was recorded as being the proper amount of property. Then you

have in 1985 a warranty deed from McFarland to the Defendant Steffen for that same twenty-eight acres.

The Plaintiff's property . . . starts with a July 1964 warranty deed from Heaton to R.L. and Ida Heaton, thirty-five acres. And another deed October 8th, 1964 from R. L. Heaton and wife to Blaine thirty-five acres. And then in April of '65 a deed from Blaine, widower, to R.L. and his wife for thirty-five acres. And then in 1971 Ida, who was – by then was a widow, transferred her interest to Clyde and Kathleen, again thirty-five acres. However, in 1987 there was a document called a correction deed. The correction deed was signed by Ms. Ida Heaton to Clyde Heaton and his wife Kathleen, but all of a sudden the acreage that we have been dealing with since 1964 by this correction deed in '87 is just automatically increased to 56.56 acres. The Court cannot find where this additional property came from. I cannot find it in the deed, I cannot find it in any of the evidence. And, of course, after that correction deed, then the Heaton deed started calling for their 56.56 acres right down to the point to where, I think it was in May of '03 that these Plaintiffs acquired the property.

The Court finds that there is no basis for this correction deed that just kind of automatically increased the property. The court finds that the tax maps are unreliable as to the number of acres in a tax map parcel.

The Court further finds that the Plaintiffs have not proven the doctrine of adverse possession. That doctrine must be proven by clear and convincing evidence. The doctrine generally states that adverse possession may be – must be of such a character as to leave no doubt of claim of ownership. And the land must be upheld by the alleged owner, open, actual, adverse, continuous, exclusive, notorious.

The Court finds that the Plaintiffs have not proven that theory by a clear and convincing evidence standard.

The Court finds that Mr. Steven Pierce was very persuasive in his presentation in regard to the land at issue. The Court takes note of the fence line that follows closely the deed description that some of the fence was visible to one walking in the area, but all of the photographs and the video that I've seen, it shows obviously an old fence which is when you can see it is close to the ground. And then, of course, as several witnesses have testified, Mr. Steve Pierce took a metal detector type device and found the fence buried under the ground and followed

> that fence close to the property line of Defendant in regard to plaintiff's property.
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> This Court finds, after review of the record as a whole, that Plaintiffs have failed to prove their theory – theories. This Court finds that the Defendant has demonstrated that in fact he is the owner of the disputed hatched area. And let this Bench Opinion be record of the Defendant's ownership without any right, title, claim of the Plaintiffs to the hatched area.

The judgment declares the defendant to be the sole owner of the Disputed area and incorporates the bench opinion verbatim. The plaintiffs moved the trial court to amend its judgment to declare them to be the true owner of everything described in their complaint. The trial court denied the motion in all respects and stated, as to property *outside* the Disputed area, "the only issue placed before the Court at the trial was the ownership of the [Disputed area], and [the Court] declines to issue a ruling as to any other areas of the Heaton or Steffen property."

The testimony as to adverse possession came by way of the two plaintiffs and their uncle, Charles Heaton.[1] Collectively, they testified that the Heatons had thought they owned land that included the Disputed area as far back as the previous century. Supposedly, the plaintiffs' ancestors had farmed the land with crops that included corn and tobacco. All farming, however, stopped in the early 1950s.

It was undisputed that the plaintiffs' father, Clyde Heaton, harvested some logs from the Disputed area a short time after the defendant purchased his property. It was also undisputed that the defendant knew about the logging and did nothing to interfere with it. The defendant testified that, at the time, he did not know where his boundary was, and that he trusted his neighbor to observe the correct boundaries. The logging did not last more than a few months. At least part of that time, the defendant was out of state. The defendant was a Florida fishing guide at the time and spent the majority of his year in Florida with the remainder in Tennessee. There was no evidence as to the amount of timber harvested, other than the defendant's recent statement to the Heaton brothers that their father took a lot of timber before the defendant learned his true boundaries.

The only other uses made of the Disputed area by the plaintiffs' family during the defendant's ownership were cutting family firewood out of treetops left by Clyde Heaton's logging, occasional hunting, and a tree stand built by Clyde Heaton's brother. The tree stand was described as a more or less permanent structure with a roof that had allowed it to remain usable to the present time. The plaintiffs admitted, however, that the defendant had given them permission to use a tree stand on his property. The Heaton brothers both admitted on cross examination that at the time the defendant bought his property, had he walked the lines, there was virtually nothing that would have indicated

[1] Both parties were discouraged – but not prevented by order – from calling additional witnesses. The plaintiffs' counsel conceded the numerous witnesses that had appeared to testify would simply mirror the testimony of the family members that did testify.

to him that the Heatons were claiming it. The plaintiffs testified, however, that they had not seen the defendant using the Disputed area in any manner.

The plaintiffs called the property assessor for Carter County as a witness. The assessor identified trial Exhibit 2, our Appendix B, as the county tax map with the defendant's property being parcel 36 and the plaintiffs' property being parcel 37. The assessor testified that the tax maps are not correct as to acreage. The assessor added, however, that "to the best of our ability they're accurate," especially for parcels with deeds whose calls are understandable. Upon inquiry by the court, the assessor said that the acreage is sometimes more estimated than calculated. Under cross-examination, the assessor stated that the margin of error should not "be a great deal." It would be "extremely rare" to find error on the order of 50 to 60%. According to the records the plaintiffs had paid taxes on 41.5 acres but were claiming 69 acres under Appendix A, including the Disputed area. The defendant had paid taxes on 23 acres but was claiming 36 acres under Appendix A including the Disputed area. The plaintiffs' surveyor had reviewed the tax records and agreed, under cross-examination, that the plaintiffs had never paid taxes on the "great majority" of the Disputed area. The plaintiffs' surveyor admitted the defendant had paid taxes on the Disputed area. He also agreed that the plaintiffs' taxes did not increase after the 1987 correction deed appeared on the scene. The Heaton brothers both admitted that their taxes did not go up as a result of the 1987 deed. The defendant's surveyor testified that the overall depiction of the defendant's property on the tax map was "relatively inaccurate," but he testified that the line on the tax map separating parcels 36 and 37 was "basically consistent" with the fence line he identified as the true boundary between the plaintiffs and the defendant.

The problem first came to light when the defendant had his property surveyed in 2004. The Heatons noticed survey flags and approached the defendant. The defendant asked that any discussion await completion of his survey. The Heatons inquired again after the survey was completed and the defendant advised that he was indeed claiming the Disputed area because it lay within the calls of his deed. The parties vowed that they would work their problems out in court, with no violence or ill will. When the trial court ruled in favor of the defendant, and declined to change his ruling on post-trial motion, the plaintiffs initiated this appeal.

II.

The issues, as quoted verbatim from the plaintiffs' brief, are as follows:

> 1. Are the Plaintiffs entitled to quiet title to all or a portion of that property described in the Complaint?
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> 2. Have the Plaintiffs established ownership by adverse possession of a 20 acre tract of land (the "cross-hatched" area) claimed by the Plaintiffs and the Defendant, Dean Steffen?
>
> 3. Did the trial court err in overruling the Plaintiffs' Motion For Additional Findings of Fact And For Direction on Quieting Title?

> 4. Did the trial court err in overruling the Plaintiffs' Motion for Alteration or Amendment of Judgment with Plaintiffs' Proposed Final Judgment?

The defendant asserts as an additional ground for upholding the judgment that the plaintiffs were barred from claiming the Disputed area by virtue of their failure to pay taxes on the property for more than 20 years.

III.

A.

Our review of this judgment entered after a bench trial is *de novo* upon the record with a presumption of correctness as to the trial court's findings of fact. Tenn. R. App. P. 13(d). Absent errors of law, the trial court will be affirmed unless the preponderance of the evidence is against those findings. ***Bogan v. Bogan***, 60 S.W.3d 721, 727 (Tenn. 2001). Review of the trial court's conclusions of law is *de novo* with no presumption of correctness. ***Ganzevoort v. Russell***, 949 S.W.2d 293, 296 (Tenn. 1997).

B.

Fortunately, we have a recent comprehensive statement of the law of adverse possession from the Supreme Court in ***Cumulus Broadcasting, Inc. v. Shim***, 226 S.W.3d 366 (Tenn. 2007). The plaintiffs quote approximately half the text of ***Cumulus*** for the simple proposition that "where one has remained in uninterrupted and continuous possession of land for 20 years, a grant or deed will be presumed." ***Cumulus***, 226 S.W.3d at 376-77. Based on this proposition, the plaintiffs contend that the chancellor erred in finding that the defendant had title superior to theirs. The plaintiffs concede that the 1987 correction deed was the first paper deed they had that encompassed the Disputed area, but argue they acquired superior title by "treat[ing] this property as their own from at least the early 1940's [with] no reason to believe anyone else had any claim of right, title, or interest in this property until 2004."

Again, we look to ***Cumulus*** for the answer.

> In order to establish adverse possession under this [common law] theory, or in any statutorily based claim, the possession must have been exclusive, actual, adverse, continuous, open, and notorious for the requisite period of time. Adverse possession is, of course, a question of fact. The burden of proof is on the individual claiming ownership by adverse possession and the quality of the evidence must be clear and convincing.

Id. at 377 (citations omitted).

The plaintiffs' proof primarily related to decades in the past when they were not even alive. Part of their evidence was that the land had been farmed by their ancestors as evidenced by piles of rocks removed from the fields and placed on the Disputed area. However, the defendant introduced unrebutted proof that some of the piles of rocks were on his land that was not even in dispute. The inference is just as strong that the Heatons were either using the land with permission of the defendant's predecessors in title, or that someone was farming other than the Heatons. Testimony to the effect that the Heaton family claimed all the way to an old fence line along the eastern edge of the Disputed area does not weigh heavily in favor of plaintiffs claim. The law presumes that whatever was done was done in subordination to the rights of the true owner. ***Bynum v. Hollowell***, 656 S.W.2d 400, 403 (Tenn. Ct. App. 1983). Without testimony from the people who installed the fence, it is just as likely that the fence, which appears to also correspond to the eastern boundary of what the defendant claims, was erected by predecessors to the defendant or with their permission. The evidence of use in the plaintiffs' lifetime was scant enough that they had to admit Mr. Steffen could have walked the land without learning they were claiming the property. Actions such as the taking of firewood and hunting are more indicative of an intent to trespass than an intent to seize and hold the land. ***McCammon v. Merideth***, 830 S.W.2d 577, 580 (Tenn. Ct. App. 1991). Minimal use by the defendant does not help the plaintiffs in the absence of "exclusive, actual, adverse, continuous, open, and notorious" use by the plaintiffs. *See* ***Cumulus***, 226 S.W.3d at 377.

The plaintiffs argue that their recent acquisition of property by quit claim deed from Charles Montgomery gave them superior title to the defendant, even if they did not acquire it by adverse possession. The Montgomery deed is not to be confused with the 1987 deed of correction. The deed of correction was from Ida Heaton to her son, Clyde Heaton, plaintiffs' father. The quit claim deed was made after this litigation was commenced, but before the final judgment. The complaint includes the heirs of D. B. Montgomery as defendants based on the allegation that plaintiffs had discovered a deed to D. B. Montgomery that covered a portion of the plaintiffs' property. Charles Montgomery answered and later executed the quit claim deed. The most that can be said, even by the testimony of the plaintiffs' surveyor, is that Montgomery had a deed that partially overlapped the Disputed property at some point in time.[2] Any concession by the defendant that part of his property may have come out of Montgomery, was effectively refuted by his surveyor, whom the trial court found particularly thorough and persuasive. According to the defendant's surveyor, until the plaintiffs made themselves a deed in 1987 they went only to the "old Bunton line." This line, according to the defendant's surveyor, was the property line of one of the defendant's predecessors, and the true boundary of the defendant which encompassed the Disputed area. The defendant's surveyor testified that he found an intact fence, which was partially buried, consistent with the Bunton line. According to the surveyor, the plaintiffs' 1987 deed improperly included both the defendant's property and the Montgomery property. The defendant's surveyor testified that he found the Montgomery property on the ground, as called for in the Montgomery deed; the Disputed area did not fall within the Montgomery deed. The Disputed area was, according to the defendant's surveyor, adjacent to the Montgomery property and not within the Montgomery property. With this evidence in the record,

[2]The quitclaim deed from Montgomery to the plaintiffs, according to the plaintiffs' surveyor, also included property that the plaintiffs already owned, "the total of everything that's been incorporated into this survey."

we do not find that the evidence preponderates against the factual findings of the trial court, especially in light of the trial court's careful attention to the credibility and demeanor of the witnesses.

C.

The remainder of the plaintiffs' brief is devoted to convincing us "that the trial court erred in failing to quiet title to that portion of the Plaintiffs' property which was not in dispute." This, we perceive, is the basis for issues previously numbered 1, 3 and 4. The plaintiffs argue that they described their property in some detail in their complaint and asked the court to quiet title to the whole property. The plaintiffs further argue that the defendant only challenged them on the land he claimed through his title. Thus, the plaintiffs argue, there is "no good or just reason to deny the Plaintiffs a judgment quieting title to the undisputed portion of their property."

We are not told why this is necessary. Presumably, the plaintiffs want a ruling to use in the future. We need not tarry long over this argument. The courts of this state act on real controversies between persons with real and adverse interests. ***Rodgers v. Rodgers***, No. M2004-02046-COA-R3-CV, 2006 WL 1358394 at *4 (Tenn. Ct. App. filed May 17, 2006) (*citing* ***City of Memphis v. Shelby County Election Commission***, 146 S.W.3d 531, 539 (Tenn. 2004)). Our courts will not issue advisory opinions. ***Id.*** Any need to declare the complete description in the plaintiffs' deed, had it been accurate, that existed at the filing of the complaint had obviously dissolved by the time the trial court entered its judgment, rendering portions of the plaintiffs' property not claimed by the defendant moot. *See* ***Id.*** Thus, the trial court was correct to decline to rule on matters that were not at issue.

D.

Before concluding, we will address the defendant's alternative argument concerning his alleged payment of taxes on the Disputed area and the plaintiffs' alleged failure to pay. We note that the trial court made a factual finding that "the tax maps are unreliable as to the number of acres in a tax map parcel." However, we do not believe this is the dispositive factual question that needed to be answered. The subject of the statutory bar from failure to pay taxes was also dealt with in ***Cumulus***, 226 S.W3d at 379.

> Tennessee Code Annotated section 28-2-110(a) was enacted to facilitate the collection of property taxes by requiring persons claiming an interest in real property to have that interest assessed and to pay the taxes thereon. ***Burress v. Woodward***, 665 S.W.2d 707, 709 (Tenn. 1984). The statute, made a part of the chapter pertaining to limitations on real actions, provides as follows:
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> Action barred by non-payment of taxes. - (a) Any person having any claim to real estate or land of any kind, or to any legal or equitable interest therein, the same having been subject to assessment for state and county taxes, who and those through whom such person claims have failed to have the same assessed and to pay any state and county taxes thereon for a period of more than twenty (20) years, shall be

> forever barred from bringing any action in law or in equity to recover the same, or to recover any rents or profits therefrom in any of the courts of this state.
>
> Tenn. Code Ann. § 28-2-110(a) (2000).
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> * * *
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> Because tax maps are for the purpose of showing the plats upon which parties have paid taxes rather than establishing boundaries, ***Whitworth [v. Hutchison]***, 731 S.W.2d [915, 917 (Tenn. Ct. App. 1986)], a "slight overlap" would rarely have any effect on an evaluation for tax purposes. Tennessee Code Annotated section 28-2-110 was enacted in order to facilitate the collection of property taxes based upon property evaluations. The burden of proof requires any party who relies upon the invocation of Tennessee Code Annotated section 28-2-110 to clearly establish the failure to pay taxes by the other party. *See* ***Bone v. Loggins***, 652 S.W.2d 758, 761 (Tenn. Ct. App. 1982). . . . Tennessee Code Annotated section 28-2-110 should not serve as a bar to a claim of adverse possession when the tracts are contiguous, a relatively small area is at stake, and the adjacent owners making claims of ownership have paid their respective real estate taxes. To hold otherwise would effectively eliminate the adverse possession of any part of an adjoining tract.

Cumulus, 226 S.W.3d at 379-81 (footnote omitted).

The dispute in ***Cumulus*** was over a narrow strip along roadway, between adjoining property owners, both of whom had paid their land taxes. Obviously, the tax maps were of no help in determining the boundaries under which the adverse owners had paid their taxes. The present case is different. The Disputed area constitutes approximately ½ of the property the defendant claimed and a significant portion of the land the plaintiff claimed. The defendant had paid taxes on 23 acres based on deeds that date back decades. The plaintiffs had paid taxes on 41 acres on deeds that changed suddenly in 1987 to encompass additional acreage including the Disputed area. The plaintiffs' taxes did not increase as a result of the 1987 deed of correction, although the acreage recited on the tax map changed from 41 acres to 56 acres. Even the plaintiffs' surveyor agreed that the plaintiffs did not pay taxes on the "vast majority" of the disputed area, whereas the defendant had consistently paid taxes on the disputed area. The defendant's surveyor testified that the line separating the parcels on the tax map was consistent with the fence line that he identified as the true boundary line between the plaintiffs and the defendant. We believe even a layman's comparison of the tax map with the surveys shows that the defendant paid taxes on the Disputed area and that the plaintiffs did not. Accordingly, we hold that the evidence preponderates in favor of a finding that the plaintiffs had not paid taxes on the Disputed area for "a period of more than twenty (20) years" and were therefore barred from bringing an action to recover the Disputed area. Thus, even if we were to hold that the plaintiffs proved their family held the Disputed area adversely up into the 1950's, they

would be barred from claiming it by their later failure to pay taxes on it. We will affirm a judgment of a trial court if it is correct, even if it reached the correct result for the wrong reason. ***Arnold v. City of Chattanooga***, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999).

IV.

The judgment of the trial court is affirmed. Cost on appeal are taxed to the appellants Scott A. Heaton and Daniel J. Heaton. The case is remanded, pursuant to applicable law, for collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE